IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 411 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

PARESH CHHAGANLAL - Opponent(s)

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Appearance :

MR PR ABICHANDANI, APP for Appellant(s) : 1,
NOTICE SERVED for Respondent s) : 1,
MR YN RAVANI for Respondent : 1 – absent.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/09/2005

ORAL JUDGMENT

1. This is an appeal filed by the State of Gujarat to challenge the order of conviction passed by the Ld. Judicial Magistrate First Class, Bhavnagar, dated 21st

January, 1994 in favour of the respondent, who was original accused in Criminal Case No. 3659 of 1990. He was charged for committing offences made punishable under sections 418, 418, 420, 467 and 468 of the Indian Penal Code.

2. In short the case of the prosecution was that in the year 1984 the respondent wrote a letter to the Collector, Bhavnagar for allotting a Typist to Yashvantray Natya Gruh. This letter was written by the respondent in the name of the organizer Shri MR Jogadiya and he forged his signature and also utilised the fabricated documents with a view to secure Government job and thereby he had committed the aforestated offences.

2.1. When this fact came to the notice of the concerned authority, complaint was given to the police of "B" Division Police Station, Bhavnagar, who commenced investigation and on completion of the usual investigation, submitted charge-sheet against the respondent on 9th December, 1990.

2.2. At the trial, the Ld. Magistrate framed charge against the respondent on 16th July, 1992 which is at Exh. 6. The respondent was charged with committing the aforesaid offences. He pleaded not guilty and claimed to be tried.

2.3. In support of its case, the prosecution examined three witnesses. At the end

of the recording of the evidence, further statement of the respondent under section 313 of the Code of Criminal Procedure was recorded. He has denied allegation levelled against him. There is, however, no specific defence pleaded by him.

2.4. At the end of the trial, the Ld. Judge by judgment dated 21st January, 1994 came to the conclusion that the prosecution had failed to prove its case against the respondent and hence he acquitted him of all the charges. Hence, this appeal.

2.5. I have heard Mr. PR Abichandani, Ld. APP for the appellant. Mr. YN Ravani, learned advocate for respondent is absent.

3. With a view to reappreciate the evidence, I have gone through the record of the appeal. The prosecution has placed reliance on the evidence of three witnesses. PW 1 – Umesh Jugaldas Trivedi Exh. 13 was attached to the office of the Assistant Director situated in Yashvantray Natya Gruh. He was discharging duty as Senior Clerk. He has stated that he knew the respondent, who at that time was working as Junior Clerk with him in the said Natya Gruh. His duty was to make booking. According to the witness, his duty and that of the respondent were different. Their offices were also different. He has stated before the police that he did not know anything about the incident. He was shown the writing in question,

but he informed the police that he did not know anything about it. There is no cross-examination by the defence.

3.1. PW 2 – Harshadrai Talakchand Doshi Exh. 17 was working as Deputy Mamlatdar in the office of the Collector, Bhavnagar. During the investigation, police has recorded his statement. He has produced certain documents before the police. These documents have been relied on by the prosecution to establish the guilt of the respondent. However, the evidence of this witness does not help the prosecution at all.

3.2. PW 3 – Hasmukhbhai Babubhai Parekh Exh. 18 was working as Clerk in the office of the Collector, Bhavnagar. He was maintaining the inward and outward register of the correspondence of the office. He has referred to letter dated 25th May, 1984, which is produced by PW 2. By the said letter respondent was allotted to Yashvantray Natya Gruh as English Typist. This witness has stated that there is no inward number given to letter dated 25th May, 1984. In the cross-examination he has, however, stated that if the letter is addressed to higher official, it may directly be handed over to him and in such circumstances, there would not be any inward number noted on the letter or in the register. He has further stated that sometimes it can also happen that on some occasion the

concerned Clerk would miss to put the inward number. He states that in the present case what had happened he did not know.

4. I have carefully considered the aforesaid evidence produced by the prosecution. The evidence of these witnesses does not in any way establish that it was the respondent who had forged any document or that he had used them fraudulently with a view to secure employment in the Government nor these documents or evidence of these witnesses establish that the respondent secured his allotment to Yashvantrai Natya Gruh. In other words, the evidence of the prosecution witnesses does not establish even remotely that the respondent had committed all or any of the aforesaid offences. I do not find any error committed by the trial Court. This is an appeal against the acquittal and unless and until this Court finds that the judgment of the trial Court is perverse or the conclusion drawn by it are so unreasonable that no reasonable person can arrive at such conclusion, then only it can interfere with the order of acquittal. In the instant case, as stated above, I do not find any error committed by the trial Court. Therefore, there is no reason for this Court to disturb the order of the acquittal. This appeal, therefore, has no merit and it is dismissed.

[Akshay H Mehta, J.]

* Pansala.